

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 400/2017

(With report dated 20.07.2020)

Westend Green Farms Society

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 23.07.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent(s): Mr. Anuj Bhandari, Advocate for CPCB

ORDER

1. This order is being passed in continuation of order dated 20.12.2019 on the subject of compliance of environmental norms by restaurants/hotels/motels/banquets etc. in terms of earlier orders of this Tribunal.

2. Vide order dated 02.11.2018, the Tribunal considered grievance against the violation of environmental norms, including solid waste management, discharge of effluents, illegal ground water extraction, ground water contamination, emission by illegally operating diesel generators, absence of statutory consents under the Water (Prevention and Control of Pollution) Act, 1974 ('Water Act'), the Air (Prevention and Control of Pollution) Act, 1981 ('Air Act') and violation of conditions of

consents where such consents are granted, **by the restaurants/hotels /motels/banquets in Mahipalpur, Rajokri areas in Delhi**. The Tribunal also considered the issue of absence of rain water harvesting, ground water recharge system, excess noise pollution, illegal parking and encroachments.

3. The Tribunal found violations on the basis of material on record and directed remedial action. Directions of the Tribunal *inter-alia* included:

- “(i) *Compilation of data of all such places where marriages and functions take place which should be published and appropriately regulated.*
- (ii) *Regulate noise level at above places as per laid down norms. This includes regulation of DJ sets, loudspeakers and crackers etc.*
- (iii) *Compliance of Solid Waste Management Rules, 2016, and sewage discharge including decentralized waste processing facilities, installation of CCTV camera, GPS system in garbage collection vans etc.*
- (iv) *Regulation of extraction of groundwater as per applicable guidelines, sealing of tube wells including those installed for swimming pools in violation of law, need for reuse of water for flushing, Plantation or gardening.*
- (v) *Rain Water Harvesting by installing roof top harvesting systems.*
- (vi) *Regulating size of gatherings on the concept of sustainable development in the light of carrying capacity of the area.*
- (vii) *Prohibiting such activities in overcrowded places not having adequate parking or other facilities.*
- (viii) *Action against unauthorized construction or unauthorized use without statutory clearances prohibiting and stopping any existing or future activities non-complying with above norms and also taking penal action where ever necessary.*
- (ix) *Environment restoration and compensating victims of violation of law in relation to Noise Pollution, Air Pollution, Water Pollution, Master Plan etc. The action plan must involve all stakeholders, particularly the students and senior citizens. The Joint Committee will have authority to close polluting activity and remove every illegal structure. The Committee will also look into the allegations whether members of the applicant are running swimming pools by*

illegally drawing groundwater without requisite valid sanctions and drawl of ground water from critical or overexploited areas, without any mechanism for ground water harvesting and recharge. If so, remedial action must be taken forthwith.”

4. Further orders were passed on 08.03.2019, 08.07.2019 and 19.09.2019 while monitoring compliance. Finally, comprehensive review of compliance status was undertaken on 20.12.2019 in the light of action taken report filed by the Delhi Government on 17.12.2019 and affidavit filed by the MoEF&CC on 16.12.2019. The Tribunal observed:

*“18. ... Thus, adequate statutory framework is available. Still, challenge is posed by polluting activities **in absence of proper enforcement and monitoring** which need review from time to time. It may be noted that this Tribunal is faced with **acknowledged serious violations in the form of non-compliance of Waste Management Rules (O.A. No. 606/2018), non-compliance of requirement of sewage treatment as well as effluent treatment (O.A. No. 593/2017, Paryavaran Suraksha case). The result is that 351 river stretches are declared to be polluted (O.A. No. 673/2018), 122 major cities are declared to be non-attainment cities in terms of air quality norms (O.A. No. 681/2018)**¹, 100 industrial clusters are declared polluted based on CEPI assessment (O.A. No. 1038/2018). There are issues with regard to illegal extraction of groundwater (O.A. No. 176/2015), absence of rain water harvesting systems (O.A. No. 496/2016), noise pollution (O.A. No. 519/2016), protection of water bodies (O.A. No. 325/2015), reuse of treated water (O.A. No. 148/2018), regulating operation of national highways to avoid traffic congestion (O.A. No. 386/2016), controlling number of vehicles consistent with carrying capacity to deal with the problems of parking and congestion leading to damage to the environment (O.A. No. 568/2016). The issue in the present case has surfaced in the context of operation of establishments where **large congregations take place for marriages or other functions**. In absence of clear strategies, compliance of environmental norms remains a challenge as pointed out in the earlier orders. This necessitates well thought out strategies within the existing statutory framework.*

*19. Needless to say that compliance of environmental norms cannot be wished away as such norms are **overarching requirement for any activity having potential for generation of liquid effluents, gaseous emissions or otherwise affecting the environment**. Apart from the licensing provisions for fire*

¹ https://cpcb.nic.in/uploads/Non-Attainment_Cities.pdf and <https://economictimes.indiatimes.com/news/environment/pollution/20-more-cities-added-to-cpcbs-polluted-list/articleshow/70721767.cms?from=mdr>

safety, building safety, etc. which may be dealt with by a Development Authority and/or a Local Body, the Regulatory Bodies under the Water Act, the Air Act and the EP Act must enforce the environmental norms to ensure that water and air pollution are prevented and environment is not degraded. Apart from statutory regulators under the Water, Air and EP Acts, several other statutes including municipal laws provide for enforcement of statutory norms by local and other authorities. By way of an example, local bodies grant clearance to buildings even with reference to environment norms in terms of applicable statutory provisions. **Article 243W read with Schedule XII (Entry 8) to the Constitution specifically provide for dealing with certain environmental issues by the local bodies.** For successful functioning of such authorities, it is necessary that an environment cell comprising qualified person for the purpose of enforcement and vigilance is set up by every such authority. **There is no reason why municipal corporations should not have such cells wherever such 'cells' do not exist so far.** This may be ensured within next three months and such information may be compiled by PCBs/PCCs and furnish to CPCB. As already observed in the earlier orders, any place where social gatherings take place having such potential needs regulatory mechanism which has to continuously evolve and needs to be enforced. The existing mechanism has to be reviewed periodically. Whenever any violations are alleged, the same need to be looked into.

20. In this background, guidelines prepared by CPCB cover the requirement of monitoring mechanism by providing enforcement of consent requirement and laying down suitable conditions for such statutory consents which can take care of necessary mitigation measures including siting guidelines and coercive measures for enforcement. The guidelines have been quoted above in para 13. Apart from the said guidelines, the Urban Development Department of Delhi has suggested action plans for **compiling data for such functions are held, constituting monitoring teams, installation of CCTV cameras, GPS system in garbage collection vans, regulating size of gatherings as per capacity of the area, restricting number of persons, fire safety devices, steps to control traffic congestion, regulating quality and quantity of food.** Additional measures have been suggested by DPCC in connected matters listed today being O.A. No. 1008/2018, Deepak Datta vs. Govt. of NCT of Delhi and O.A. No. 515/2019, President Bhudhela Welfare Associations Vs. Govt. of NCT of Delhi, referred to in Para 14 above. CPCB may consider the said suggestions and incorporate the same in its draft guidelines to the extent not already included but found relevant for application pan India.

21. We are of the view that enforcing the requirement of Consent to Establish should be the starting point for commission of the project rather than the last in the governance chain meaning thereby that **no project should commence its establishment without such consent from PCB/PCC.** Needless to say, in the process of granting such consent, all relevant and suitable conditions must be imposed after evaluation of **carrying capacity of the area to take such additional project, siting norms, inter se distance of such**

projects, adequacy of parking facility, mode of disposal of solid waste, mode for disposal of liquid waste including sewage, adequacy of mitigation with respect to noise pollution, adherence to norms for DG Sets, permission of Central Ground Water Authority or designated authority for ground water drawal. Such norms must be applied to all existing establishments and those found not meeting the norms must be closed till the norms are complied. The project proponent must file their Annual Environment Statements in terms of Rule 14 of the EP Rules. The State Board must have robust monitoring mechanism to evaluate compliance to norms atleast twice a year especially during and after the marriage/festive season during which such entities operate to maximum capacity.

Apart from this, the consent conditions must require the owner/manager of establishment informing the organizer/user in writing in advance about the conditions applicable for ensuring compliance. Conduct of functions must not disturb other citizens right to peaceful and clean environment.

Stringent norms need to be worked out for controlling and regulating parking of vehicles, used by the organizers and guests in functions as well as parking of vehicles generally on roads and public places adding to the air pollution. This includes regulation of pick and drop activities.

Use of DJ systems must be fitted with noise limiters and data loggers and be operated within sound proof halls within prescribed noise limits without its effect being felt outside.

Environment protection measures require that number of vehicles in any city/area must be limited to the available capacity for parking. **All public places and roads cannot be converted into parking places** without any regulatory measures. Planning on this aspect is a condition precedent for compliance of environmental norms. Parking can be allowed only at designated places. Stringent measures must be taken by statutory authorities including the Traffic Police against any such parking. In this regard, vide order dated 19.01.2015 in O.A. No. 21/2014, Vardhaman Kaushik Vs. Union of India, it was observed:

“.....It will be ensured that stagnation of vehicle and traffic congestion are avoided particularly by prohibiting parking on the main roads or any parking area on the metalled roads. We direct all the SHOs concerned, the Traffic Police and the concerned Corporation to ensure compliance of these directions without any default. There will be complete prohibition of parking of any cars on the metalled roads and the corporation would take strict action against the persons who violates it. This shall include payment of Rs. 1000/- per car on account of compensation for degradation of environment and its restoration. This would also be charged on the cars, which are parked on the metalled roads.”

The above direction must be enforced not only for Delhi but atleast for 122 non-attainment cities in the country. The Transport Departments of all the States/UTs may assess the available parking capacities in the said 122 cities and determine the number of vehicles which can be accommodated in terms of parking space available in the said cities. In case the number of vehicles exceed the capacity, there should be action plans for providing adequate additional parking space. **If it is not possible, the number of vehicles to be registered must be curtailed by using appropriate economic disincentives or otherwise and alternative provided to the citizens in the form of public transport system.** If these steps (declaring the capacity of number of vehicles and designating parking spaces, prohibiting unregulated parking at public places) are not taken, this Tribunal may have to take coercive measures for protection of environment including direction for limiting registration of any new vehicles in the said cities.

The establishments where social functions are held must notify the designated places where vehicles are to be parked and number of vehicles are allowed. The organizer of a function must ensure and give an advance undertaking that the number of guests invited have been informed about the extent of parking facility available. **In any case, no vehicle be allowed to be parked at public places. The owner of the property will be liable for any default.** These regulatory measures are necessary to avoid inconvenience to general public and compliance of environmental norms which are part of right to life.

CPCB may finalize guidelines after considering these observations within one month and circulate the same to all the States/UTs to serve as indicative minimum norms. It is open to all the States/UTs to further add to such norms without diluting the same. The States/UTs may implement the same and furnish a compliance report to CPCB within three months. Any non-compliance may result in coercive measures being adopted by this Tribunal. CPCB may compile the information received from the States/UTs and furnish a consolidated report to this Tribunal before the next date. As far as Delhi is concerned, as directed in O.A. No. 1008/2018, Deepak Datta vs. Govt. of NCT of Delhi and O.A. No. 515/2019, President Bhudhela Welfare Associations Vs. Govt. of NCT of Delhi, DPCC may lay down and enforce the suggested norms immediately pending further revision in the light of comprehensive guidelines of CPCB.”

5. In the light of above discussion, following directions were issued:

“22. Accordingly, we sum up our directions as follows:

- “i. CPCB may finalise its draft guidelines dated 16.12.2019 referred to in para 13 above in the light of observations in paras 20 and 21 above and circulate the same to all the States/UTs within one month. The PCBs/PCCs may, in consultation/coordination with concerned State

Authorities, adopt the same with necessary modifications but without diluting its essence and furnish status report about compliance to CPCB within three months but before 30.04.2020.

- ii. PCBs/PCCs may in particular ensure compliance of directions in para 21 above.*
- iii. CPCB may compile the data and furnish a comprehensive report before the next date.*
- iv. Only designated places may be used for parking and no parking may be allowed at public places/roads atleast in 122 non-attainment cities. The Transport Departments of all the States/UTs may assess the available parking capacities in the said 122 cities and determine the number of vehicles which can be accommodated in terms of parking space available in the said cities. In case the number of vehicles exceed the capacity, there should be action plans for providing adequate additional parking space. If it is not possible, the number of vehicles to be registered must be curtailed by using appropriate economic disincentives or otherwise and alternative provided to the citizens in the form of public transport system. If these steps (declaring the capacity of number of vehicles and designating parking spaces, prohibiting unregulated parking at public places) are not taken, this Tribunal may have to take coercive measures for protection of environment including direction for limiting registration of any new vehicles in the said cities.*
- v. All local bodies in 122 non-attainment cities may ensure setting up of environmental cells within three months, if such cells have not already been set up.*
- vi. DPCC may ensure compliance of environmental norms including siting guidelines for marriage palaces/ restaurants/hotels /motels/banquets or other such establishments where large congregations take place having potential of adversely affecting environment consistent with all the suggestions noted above forthwith, pending revision of norms in the light of CPCB guidelines as above and file a status report before the next date.”*

6. Accordingly, CPCB has filed its report dated 20.07.2020 to the effect that guidelines were finalized by the CPCB and circulated to all States/UTs on 19.03.2020. Follow up action of seeking data from all States/UTs was initiated on 23.06.2020. Data has been received from eight (08) States – Goa, Gujarat, Himachal Pradesh, Madhya Pradesh,

Meghalaya, Odisha, Punjab and Tripura out of which response of four (04) States only was in the prescribed format. The report concludes with the following remarks:

“It is observed that, most of the SPCBs & PCCs could not submit the Report to CPCB in compliance with the Order of Hon'ble Tribunal. Hence, it is difficult to interpret the status of the enforcement of the Environment norms for such type of establishment in entire country.

However, based on the data submitted by the above 04 no. SPCBs, it is recommended that, All the States/UTs may have proper Mechanism/Guidelines for control of pollution and enforcement of environmental norms in marriage halls, banquet halls, party venues etc. along with consent management system.

For sustainable use of water, ETP must be installed at all such units and should meet compliance. RWHs be widely adapted.

All the units should have proper ductile arrangement in the kitchen (if they have), For huge no. of Units, it is found that, DG sets have no proper stack height. The units using DG sets must adapt the proper stack height.

If the units have kitchen with them, installation of composting facility should obviously get utmost priority for proper and easy management of the solid waste and fruitful use of resource so that manner or energy may be obtained and utilized suitably.

As per provisions of the Noise Pollution (R & C) Rules, 2000, permission may be obtained from concerned Authorities by the units, but, SPCBs/PCCs may follow up to have the information with them also to strengthen control of noise pollution at/from the units.

It is also found that, huge no of units have no adequate space at their parking site and even most of them do not have own parking facilities also. The existing unit should find out the alternate facility and same be mandatory for the new units.

The Hon'ble Tribunal may issue appropriate directions as it deems fit which the Committee is bound to comply with.”

7. In view of above, let all the States/UTs take further steps in the matter of adopting and enforcing the CPCB guidelines to ensure sustainable use of water, solid and liquid waste management and compliance with the statutory environmental norms under the Water Act,

1974, the Air Act, 1981, the Environment (Protection) Act, 1986 ('EP Act, 1986') including the Noise Pollution (R&C) Rules, 2000, providing for adequate parking facilities and having adequate stack heights for the DG Sets. Compliance of such norms must be overseen by the statutory regulatory authorities, including the Local Bodies, the State PCBs/PCCs and, wherever there is violation, stringent action must be taken by way of stopping the non-compliant activities, initiating prosecution and recovering compensation on "Polluter Pays" principle. This is necessary to enforce the right of citizens to clean environment, which is part of right to life.

8. We have also perused compliance report filed by the Delhi Government which mentions steps taken so far. The report mentions that the Delhi Government has adopted the CPCB guidelines and started its implementation by way of recovering environmental compensation and stopping the non-compliant activities.

9. Let all the concerned authorities in all the States/UTs and the State PCBs/PCCs take further action and give their quarterly report to the CPCB. The same may thereafter be further followed up and compiled by the CPCB. It is made clear that if there is non-compliance by the States/UTs, PCBs/PCCs, the Tribunal may have to make the concerned authorities accountable by requiring payment of compensation as well as action against defaulting and erring officers. A further status report as on 30.11.2020 be filed by the CPCB on or before 31.12.2020 by email, making copies of report available to all relevant parties by webhosting on its website or otherwise.

The CPCB may hold a video conferencing with all the State PCBs/PCCs within one month from today which may cover, as far as possible not

only the present but other significant environmental issues also. If one sitting is not enough, more such sittings be held at suitable intervals so as to avoid delay in compiling relevant information.

A copy of this order be sent to the Chief Secretaries, State PCBs/PCCs and CPCB by email.

List for further consideration on 04.02.2021.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

July 23, 2020
Original Application No. 400/2017
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